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Don't forget to keep up on NDLS events through the Law School's web site, www.law.nd.edu.



NDLS Update
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NDLS Update

News from the Notre Dame Law School

**Have a Very Merry Christmas
and a Happy New Year!!!**

Election 2000 - The Updates Continue

In the November 2000 edition of *NDLS Update*, we inadvertently omitted Associate Professor of Law Bill Kelley as a member of the NDLS contingent involved in Election 2000. He is listed among the counsel for the petitioner, Republican presidential candidate George W. Bush, in *George W. Bush v. Palm Beach County Canvassing Board et al.*, argued before the United States Supreme Court on December 1, 2000, and in *Bush v. Gore*, argued before the United States Supreme Court on December 11, 2000.

* * *

Professor Jimmy Gurulé has added an op-ed piece to the debate. *Bush's Case Appears Far Stronger*, appeared in the November 30, 2000, edition of USA TODAY, and is available on-line at <http://www.usatoday.com/news/comment/ncguest1.htm>. The counterpoint to his opinion on the case currently before the United States Supreme Court, *Court Correct to Side With Gore*, was provided by Stanford law professor Pamela Karlan and can be found on-line at <http://www.usatoday.com/news/comment/ncguest2.htm>.

Associate Professor John Nagle commented on the display of partisanship rampant in the post-election maneuverings in an article titled *Partisan Wrangling Grows Over Manual Ballot Count* in the November 14, 2000, edition of THE ARIZONA REPUBLIC. He particularly took issue about a statement made shortly after the election by Gore campaign chairman William Daley about the election confusion in Palm Beach County.

“He suggested that this was an injustice unprecedented in American history,” said John, who opined that Daley’s comments were intended to inflame the passion of Gore supporters. “Well, it doesn’t strike me as even being in that league.”

John further commented that, in the short term, the partisan hostility is likely to undermine public confidence in the integrity of elections. But then, he added a hopeful note: “We tend to be a pretty resilient people. We have survived a lot of remarkable circumstances in our history, and I’m sure we’ll survive this one.”

* * *

Assistant Professor Rick Garnett contributed his comments to an editorial by David Reinhard titled *Civics 101: Presidency is a Federal Office* in the December 3, 2000, edition of the PORTLAND OREGONIAN. He discussed the matter of states’ rights and federalism, stating:

“The idea that just because conservatives or Republicans are concerned about maintaining the federalist structure doesn’t mean they’re precluded from relying on clear federal rights when they think those rights are being infringed. Conservatives are simply for maintaining the balanced federal structure of our system. We don’t deny that areas of federal power exist.”

In further addressing current opinion that conservatives or Republicans, who generally favor states’ rights, are being hypocritical when asserting that the federal government should become involved in matters concerning the election of the president, he noted, “Some of these charges that are being leveled against the Bush campaign reflect a misunderstanding of what conservatives believe about the Constitution.”

And in an article distributed by Newhouse News Service on December 1, 2000, he commented on the finality and force of the Supreme Court rulings in the election case: “As the saying goes, the Supreme Court doesn’t have force, it only has judgment.” He explained further that the Supreme Court’s authority exists only to the “extent we have a culture and society here in this country that considers the court legitimate.” But, he commented, “There is always the problem of executing a judgment once you get it. A judge doesn’t come down and collect your debt for

you. The Supreme Court can tell people to do things or not to do things, but ultimately, a good result depends on our having a culture of law. We are steeped in this idea of the rule of law, and that hangs on the willingness of the other branches, mostly the executive branch, to enforce the laws.”

* * *

Professor Joe Bauer and Assistant Professor Rick Garnett squared off, providing different points of view on the U.S. Supreme Court cases, the Florida Supreme Court cases and the case in Leon County Circuit Court before Judge N. Sanders Sauls. They appeared on WSBT-TV, South Bend’s CBS affiliate, on Friday, December 1st, and were on WSBT Radio 960 on December 1st and 6th.

* * *

Dean Emeritus David T. Link commented on the standards Indiana uses to count punch-card ballots – “if there’s no hole in the ballot card, there’s no vote” – in an article titled *Indiana Law on Chad Clear, High Court Told*, in the December 12, 2000, edition of THE INDIANAPOLIS STAR. The article discussed several close races in Indiana in the 1980s and how state election officials including Dave Link went about setting standards for counting ballots.

* * *

Does anyone other than the editor of this newsletter think that Judge N. Sanders Sauls and Professor Bob Blakey may well be the same person?

* * *

Also seen commenting on the election proceedings was Hon. Andrew P. Napolitano '75J.D., who took a break from his popular "Power of Attorney" television show to provide commentary on a number of FoxNews Channel shows including "Hannity & Colmes," "The O'Reilly Factor" and "The Edge" in early and mid-December.

Professor Rice Announces Retirement

Professor Charles E. Rice has announced that he will retire to emeritus status as of the end of the 2000-2001 academic year, after more than 30 years on the NDLS faculty. He earned his A.B. from the College of the Holy Cross in 1953, his J.D. from Boston College in 1956, and his LL.M. and J.S.D. from New York University in 1959 and 1962, respectively. A member of the New York Bar since 1957, he engaged in private practice in New York City (1958-61), and before joining the Notre Dame faculty, taught law as a lecturer at C.W. Post College (1959-61)

and New York University (1959-61) and as a professor at Fordham University (1960-69).

His areas of academic interest have included constitutional law, jurisprudence, regulation, real property, restitution and torts. As director of Notre Dame's Natural Law Institute, he served as co-editor of the AMERICAN JOURNAL OF JURISPRUDENCE from 1970 to 1997. He has been a consultant to the U.S. Commission on Civil Rights and a member of the Education Appeal Board at the U.S. Department of Education (1981-93). In 1996, he was named to the board of trustees of Franciscan University in Steubenville, Ohio.

A staunch pro-life advocate, he has co-authored numerous briefs involving right-to-life and right-to-die issues, and has served as co-chair of Free Speech Advocates of Catholics United for Life. His recent publications include THE WINNING SIDE: QUESTIONS ON LIVING THE CULTURE OF LIFE (St. Brendan's Institute 1999) and FIFTY QUESTIONS ON THE NATURAL LAW: WHAT IT IS AND WHY WE NEED IT (Ignatius Press 1993).

He is loved by the hundreds of students he taught over the last three decades in his torts, jurisprudence and constitutional law classes. Although he hopes to be able to teach an elective course in jurisprudence beginning in the spring 2000 semester, we will miss his unique classroom presence.

Alumni Honors

Ann Claire Williams – CHICAGO LAWYER Person of the Year 2000

Hon. Ann Claire Williams '75J.D., '97LL.D. (Hon.), of the U.S. Court of Appeals for the Seventh Circuit, was named Person of the Year for 2000 by CHICAGO LAWYER. The article in the December 2000 issue of the periodical shows tremendous insight into the many facets of Judge Williams' personality. In particular, the article deals with her family background, her education including her time at NDLS, her work as an attorney prior to being appointed by President Reagan to the U.S. District Court for the Northern District of Illinois in 1985, her work on the appellate bench since her swearing-in earlier this year, her involvement at Notre Dame as secretary of the University's Board of Trustees, her deep devotion to her family and her genuine concern for and love of friends, co-workers and others. The article includes significant commentary from those who know her well including NDLS alumni Hon. Roland Chamblee '74, '77J.D., and Jack Sandner '68J.D.

James F. Groves Named American College of Trial Lawyers Fellow

James F. Groves '72J.D., a partner at Hardig, Lee & Groves in South Bend, has become a fellow of the American College of Trial Lawyers. Created in 1950 to recognize excellence in trial lawyers, the ACTL includes members from every segment of the U.S. and Canadian civil and criminal trial bars. In addition to identifying and recognizing outstanding trial lawyers, the ACTL exists to improve the standards of trial practice, the administration of justice and the ethics of the profession. Membership is by invitation only, after careful examination of the nominee's experience, skill, ability and ethical standards.

Martin J. Hagan Named American College of Trust and Estate Counsel Fellow

Martin J. Hagan '73, '76J.D., a partner in the Trusts and Estates Department of Schnader Harrison Segal & Lewis, L.L.P., resident in the firm's Pittsburgh office, has been elected as a fellow of the American College of Trust and Estate Counsel, the premier professional association of trust and estate lawyers in the country. Fellows are selected for membership for their demonstrated abilities in the

fields of trusts and estates, and for their contributions to these fields through lecturing, writing, teaching and bar activities. In addition to his practice in the areas of estate and trust planning, administration and litigation, Mr. Hagan is a frequent speaker and lecturer on estate-planning issues, has authored numerous articles and is an active member of a number of professional associations.

**Thanks to CLE Presenters
for Fall 2000**

This fall's home-football CLE program featured a number of NDLS faculty and alumni giving presentations on topics ranging from ethics to Title IX. Thanks to the following participants:

September 16, 2000

Mary Margaret Penrose '99LL.M., Assistant Professor of Law at Oklahoma University, presented "Practical Considerations for Jury Selection in Federal Court Practice"; and

Associate Professor John H. Robinson '72M.A., '75Ph.D. presented "The Ethics of Multidisciplinary Practice."

October 28, 2000

Charles R. Shedlak '85, Attorney, presented "Professional Responsibility Above the Line"; and Associate Professor Matthew J. Barrett '82, '85J.D. presented "Accounting for Contingent Liabilities: Legal Considera-

November 11, 2000

William P. Hoye, Associate Vice President and Counsel and Concurrent Associate Professor of Law, presented "Ethical Dilemmas in Contemporary Legal Practice"; and Cathy Pieronek '84, '95J.D., Director of Law School Relations, presented "Title IX and Intercollegiate Athletics: Myth vs. Reality."

Next fall, the programs will be held on the Michigan State (September 22, 2001), West Virginia (October 13, 2001) and Tennessee (November 3, 2001) home-football weekends. If you'd like to be added to the mailing list for these programs – which include two hours of CLE credit, including one hour of ethics, and which allow you to purchase up to two tickets for the game – please contact Cathy Pieronek at the Law School Relations Office.

**NDLS Walkers Support
Diabetes Research**

A team of walkers from NDLS raised \$1,444.00 for the American Diabetes Association annual walkathon in November. Law School administrators and staff Rebecca Ward (team captain), Tina Jankowski and Debbie Sumption, joined by NDLS 1Ls Andrea Bernica, Anna Rossi and Kathleen Surowiec, walked through University Park Mall on Saturday, November 4th, supported by contributions from the NDLS and University communities.

Indiana Court of Appeals Visits NDLS

A three-judge panel from the Indiana Court of Appeals visited NDLS on Wednesday, November 15, 2000, to hear oral arguments on an appeal in a criminal matter that involved the legality of a search under the Fourth Amendment. Hon. Sanford M. Brook, formerly an adjunct associate professor of law in the NDLS trial advocacy program, was joined by Hon. Edward W. Najam Jr. and Hon. Nancy Harris Vaidik on the three-judge panel, who heard an appeal involving a search warrant for drugs that was not served by police until a week after it was issued. The defendant maintained that the warrant was stale and that the evidence found – including several bags of cocaine and marijuana, eight handguns and \$6,400 in cash – should not be allowed into evidence at his trial.

The program is part of an attempt by the court to bring the court's work closer to the public. The following day, the panel heard an appeal on another criminal matter at John Adams High School in South Bend.



Faculty News

Due to a typographical error in the last issue of *NDLS Update*, we incorrectly noted that Honorable Harry Crittenden Dees, adjunct associate professor of law, was reappointed to a four-year term on the Bankruptcy Court for the Northern District of Indiana. The term is for *fourteen* years. We apologize for the error.

Congratulations to Marzy Bauer, wife of NDLS Professor Joe Bauer, who received the Endowment Achievement Award for the United Jewish Communities at the General Assembly in Chicago. Marzy, who is associate director at South Bend's Madison Center, served in a volunteer capacity as the first chair of the Grants Committee of the Endowment Fund of the Jewish Federation of St. Joseph Valley from 1997 to June 2000. Her efforts included the creation of a committee with community goals, the fostering of intra_group collaboration for grants, and the achievement of three collaborative projects receiving grants.

* * *

Tex Dutile spoke on "Thinking About Law (and Law Schools)" to pre-law students at Saint Mary's College in November. Later in November, he addressed faculty and students in the University's Mendoza College of Business at a "brown bag" luncheon talk on "The Faculty Board on Athletics and the NCAA Faculty Rep."

* * *

Rick Garnett co-authored an *amicus* brief before the United States Supreme Court in *The Good News Club v. Milford Central School*, a case from the Second Circuit con-

sidering whether a school district can prevent a religious group from using school facilities for after-school meetings. He also published a commentary titled *Misguided Voucher Verdict* in the December 14, 2000, edition of THE WASHINGTON TIMES. The essay discussed the Sixth Circuit's recent decision holding that the school voucher program recently implemented in Cleveland, Ohio, violates the Establishment Clause.

* * *

Bill Hoyer served as author and judge for a mock trial of the case of *Sunnybrook v. Immaculate Heart*, held in St. Louis at the National Conference of the University Risk Management and Insurance Association (URMIA).

* * *

Cathy Kaveny published *Law, Morality and Common Ground* in the December 9, 2000, edition of AMERICA.

* * *

Bill Kelley participated in a panel discussion on the First Amendment at the 2000 convention of the Federalist Society in Washington, D.C., in November. Co-panelists included Walter Dellinger, former Solicitor General, Kenneth Starr, former Independent Counsel, and Nadine Strossen of the American Civil Liberties Union.

* * *

Don Kommers published *Artist in Exile*, an article about Notre Dame's late artist-in-residence Ivan Mestrovic, in the Autumn 2000 issue of NOTRE DAME magazine. It's

an interesting article that explores Mestrovic's art, which graces much of our campus, and also describes and explains the political, social and religious turmoil that have existed for most of the last century in Mestrovic's native Croatia.

Don's more scholarly writings of late include: *The Basic Law: A Fifty-Year Assessment*, published in volume 53 of the SOUTHERN METHODIST UNIVERSITY LAW REVIEW; *A Comparative Constitutional Law Canon*, co-authored with John E. Finn and published in volume 17 of CONSTITUTIONAL COMMENTARY; *Teaching Comparative Constitutional Law: Why and How?* published in Mark Tushnet and Vicki Jackson (eds.), *DEFINING COMPARATIVE CONSTITUTIONAL LAW* (Greenwood Press 2000); *Fifty Years of the Federal Republic of Germany*, a 15-page pamphlet published by Inter-Nationes, a unit of Germany's Foreign Ministry; and a review of *Only the Nails Remain: Scenes from the Balkan Wars*, published in the April 22, 2000, edition of AMERICA.

He has also had a number of speaking engagements. He delivered the keynote address, "Freedom of Speech in Germany and the United States," and moderated an exchange of views between Justice Antonin Scalia of the U.S. Supreme Court and Justice Dieter Grimm of Germany's Federal Constitutional Court at the Comparative Law Colloquium on "The Value of Free Speech and Its Reasoned Limits," sponsored by the Catholic University of America School of Law in June. He served as moderator and commentator on a panel discussing "Immigration and Integration: Its Effect on the Culture and on the Life of the Church" at the Sixth Germany-America Colloquium, sponsored by the Archdiocese of Chicago at the Mundelein Conference Center in Sep-

tember. He also delivered a public lecture on "German Unification: The Constitutional Dimension" at the University of Kansas School of Law in October.

* * *

John Copeland Nagle published a book review of Elizabeth Drew's *CORRUPTION, POLLUTION, AND POLITICS: WHAT WENT WRONG & WHY* in volume 110, no. 2 of THE YALE LAW JOURNAL.

* * *

Hon. John T. Noonan Jr., of the U.S. Court of Appeals for the Ninth Circuit who served this semester as the Judge J. Clynes Jr. Visiting Professor of Law, was the subject of an article in the November 17, 2000, edition of COMMONWEAL. Titled *A Case of Doctrinal Development*, the article explores Judge Noonan's scholarship as it relates to Catholic doctrine. It is an insightful look into the work of someone that Hon. Richard Posner, of the U.S. Court of Appeals for the Seventh Circuit calls one of the "great scholars of modern law."

* * *

Teresa Godwin Phelps presented a program on "Advanced Legal Writing" for the staff attorneys at the U.S. Court of Appeals for the Seventh Circuit in Chicago on October 6, and returned to that court's Conference for District Court Staff Attorneys on October 23 to conduct a day-long writing workshop. On October 10, she presented a lecture on "Shattered Voices: Language, Violence and Retribution" at the University of Illinois Law School, Champagne-Urbana.

* * *

On November 30th, Charlie Rice spoke on "The Renewal of the Family: Pope John Paul II's Vision for the Family" at a lecture sponsored by the Law School's Thomas More Society. The talk focused on the pope's recent "Letter to Families," available on line at www.vatican.va/holy_father/john_paul_ii/letters/documents/hf_jp-ii_let_02021994_families_en.html.

* * *

John Robinson traveled to Clearwater Beach, Florida, in February to speak at the Stetson Conference on Higher Education on the constitutional rights of religiously affiliated colleges and universities under the Establishment and Free Exercise Clauses of the First Amendment. In March, he traveled to Cincinnati, Ohio, to speak at Xavier University on the moral and legal implications of recent developments in genetic research. And in June he traveled to Washington, D.C., to speak at the annual convention of the National Association of College and University Attorneys on *Ex Corde Ecclesiae* and its application to American Catholic colleges and universities.

In July, he completed an article on the extraterritorial application of American law, which will appear in the JOURNAL OF COLLEGE AND UNIVERSITY LAW early in 2001. His encyclopedia entry on death and dying in American law will also appear in print later this year.

* * *

Jim Seckinger recently presented a number of lectures on trial advocacy techniques including: "Trial Skills and Techniques for Persuading a Fact Finder" for the New Zealand Law Society in Heretaunga, New Zealand, for McCarthy

Tetrault in Toronto, Ontario, Canada, (in English and French), and at both Fish & Neave and Skadden Arps in New York, New York; “Case Analysis and Witness Examination” at a number of Canadian institutions including Dalhousie University of Laws in Halifax, Nova Scotia, the University of Ottawa Faculty of Laws in Ottawa, Ontario, the University of Victoria Faculty of Laws in Victoria, Vancouver Island, British Columbia, and the University of British Columbia in Vancouver; “Faculty Critique in Teaching and Learning Lawyering Skills” for the New Zealand Law Society and the Advocates’ Society of Toronto, Canada, as well as for the National Institute for Trial Advocacy’s Teacher Training Program at the Harvard Law School and at Loyola University of Chicago School of Law; “Deposition Skills and Techniques for Taking and Defending a Deposition” for NITA’s Mid-Central Deposition in Indianapolis, Indiana, and for Fish & Neave in New York, Hahn Loeser & Parks in Cleveland, McDermott Will & Emery in Chicago and Washington, D.C., Pennie and Edmonds in New York, and Skadden Arps in Chicago, Los Angeles and San Francisco; “Examination of Expert Witnesses at a Deposition and at Trial” for Hahn Loeser & Parks in Cleveland, Skadden Arps in Los Angeles and Torgys in Toronto, Ontario; and “Helping – Not Annoying – the Judge” for the Advocates’ Society’s Courthouse Series in Toronto, Ontario.

He has published a number of these lectures, other articles and trial-advocacy instructional materials including: *Helping – Not Annoying – the Judge, Motion Sickness and How Counsel Can Improve Motion Practice* (with M. Cormier), and *Opening Statements that Persuade the Judge or Jury* (all published in the Advocates’ Society Courthouse Series, Toronto 2000); *Case Analysis and Witness Examination*; *Trial Advocacy Coursebook, Prob-*

lems and Instructional Material on Trial Advocacy Techniques and Deposition Techniques Course Packet, Problems and Instructional Materials (Notre Dame Law School 2000); *Materials on Advocacy Skills and Techniques* (McCarthy Tetrault, Toronto 2000); *Materials on Litigation Skills* (New Zealand Law Society 2000); *Trial Advocacy Skills – Trial Concepts and Techniques, Demonstration Vignettes, Drills, and Problems* (Skadden Arps, Fish & Neave 2000); *An Analysis of Faculty Critique* (New Zealand Law Society 2000); *Instructional Materials for the Advocates’ Society Teacher Training Program and Faculty Critique, Teaching and Learning Lawyering Skills* (Advocates Society, Toronto 2000); *NITA Teacher Training Program – Paper on Faculty Critique and Program Schedule, Self Analysis of the NITA Method and Program Schedule for Teacher Training and Deposition Skills – Taking and Defending a Deposition – Concepts and Techniques, Demonstration Vignettes, Drills and Problems* (NITA, Pennie & Edmonds 2000); *Instructional Materials for Expert Witness Program* (Torgys, Hahn Loeser & Parks, Skadden Arps 2000); (NITA 2000); *Deposition Skills with Concepts and Techniques for Taking and Defending a Deposition, Demonstration Vignettes, Drills, and Problems* (Fish & Neave 2000); *Program Schedule, Instructional Materials, and Appendices for Deposition Skills* (Hahn Loeser & Parks 2000); *Program Schedule with Instructional Materials for Deposition Skills* (McDermott Will & Emery, Pennie & Edmonds, Skadden Arps, Ministerio de Justicia in El Salvador 2000); and *Seminaria Tecnicas Orales de Litigo en Procedimientos Judiciales* (Ministerio de Justicia, Centro de Informacion, Documentacion, Divulgacion y Culturizacion Juridica, San Salvador, El Salvador 1999).

* * *

Steven D. Smith published a review of *BRENNAN AND DEMOCRACY* by Frank I. Michelman, and a review of *THE WARREN COURT AND AMERICAN POLITICS* by Lucks A. Powe, in the November 1, 2000, edition of *First Things: A Monthly Journal of Religion and Public Life*.

* * *

Jay Tidmarsh published a review of *SEDUCED BY SCIENCE*, by Stephen Goldberg, in volume 80 of *THE JOURNAL OF RELIGION*.

He was also appointed to serve on the Advisory Committee on Circuit Rules for the United States Court of Appeals for the Seventh Circuit.



Alumni News

1970s

Robert M. Edwards Jr. '76J.D., a partner in Jones Obenchain, L.L.P., in South Bend, has been re-elected as a director of Defense Trial Counsel of Indiana.

1990s

Joseph Brossart '98J.D. recently completed his clerkship with the U.S. Court of Appeals for the Sixth Circuit in Cleveland, Ohio, and has joined the Office of the Federal Public Defender for the Southern District of West Virginia, where he will focus on appellate work.

Cheryl Greene '96J.D., an attorney at Sopko, Nussbaum & Inabnit in South Bend, argued a case before the Indiana Supreme Court on October 5, 2000, on behalf of the City of South Bend. The case, which involves efforts by the city to take church property belonging to City Chapel Evangelical Free Church under eminent domain, is one of first impression in the state.

Lynn E. Kalamaros '93J.D., managing partner of the South Bend office of Hunt Suedhoff Kalamaros, has been elected as a director of Defense Trial Counsel of Indiana.

Sheila O'Grady '93J.D. has been named chief of staff to Chicago mayor Richard

Daley. She will be responsible for the day-to-day operations of the city's government and for managing more than 40 departments. Since graduation, she has held a number of positions in Chicago government, beginning as director of code enforcement in the city's Zoning Department. She has also worked for Victor Reyes, Mayor Daley's chief lobbyist, and was in charge of liaison with the City Council. In early 2000, she was named first deputy commissioner in the Department of Planning and Development.

Melissa O'Laughlin White '97J.D. married Richard White on December 31, 1998. They are the proud parents of a baby girl, Natalie Ann, born on August 13, 2000, in Seattle, Washington.

Class of 2000

David D. Black recently passed the Texas bar and is an associate specializing in corporate law and civil litigation at Cokinos, Bosien & Young in Houston.

Christy Dawn Brown is a clerk with the Second Circuit Court of Appeals in Fort Worth, Texas.

Matthew Hagenow recently passed the Indiana bar and has joined Newby, Lewis, Kaminski & Jones in LaPorte, Indiana, as an associate.

John Kuehn has joined the South Bend office of Barnes & Thornburg as an associate in the firm's Labor and Employment Department.

Joseph Reid has sent along a note that he passed the California bar. He's currently an associate at Gray Cary Ware & Freidenrich in San Diego, California.

Student News

Kristina Curkovic, a third-year student, published *Accent and the University: Accent as Pretext for National Origin Discrimination in Tenure Decisions* in the Spring 2000 issue of the JOURNAL OF COLLEGE AND UNIVERSITY LAW. Her Note suggests that the deference courts have traditionally shown toward academic hiring decisions is misplaced when it deals with accent because, she argues, accent is so closely related to national origin. Kristina urges that courts should perform a more rigid analysis of a university's hiring decision under these circumstances. Kristina, who majored in linguistics as an undergraduate at the University of Michigan, intends to continue studying the interaction of law and language.

